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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,866	04/10/2001	Timothy Jay Smith	9D-EC-19759	7398

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EXAMINER	
JARRETT, SCOTT L	

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/829,866	SMITH ET AL.	
	Examiner	Art Unit	
	Scott L. Jarrett	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 September 2002* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

EA

DETAILED ACTION

1. This **Final** Office Action is responsive to Applicant's amendment filed June 22, 2005. Applicant's amendment amended the specification, amended claims 1-20. Currently claims 1-20 are pending.

Response to Amendment

2. The objection to the specification in the First Office Action is withdrawn in response to the Applicant's amendment to the title.

3. The 35 U.S.C. э 112 (2) rejection of Claims 5 and 14 in the First Office Action is withdrawn is response to the Applicant's amendments to Claims 5 and 14.

4. The 35 U.S.C. э 101 rejections of Claims 10-18 in the First Office Action are withdrawn in response to the Applicant's amendments.

Response to Arguments

5. Applicant's arguments filed June 22, 2005 have been fully considered but they are not persuasive.

In the Applicant's remarks, Applicant argues that:

- Claims 1-9 represent statutory subject matter and produce a useful, concrete and tangible result as required under 35 U.S.C. 101 (Pages 7-9);

- the prior art of record, specifically Borders et al., Murphy and O'Brien, fail to disclose a system for calculating the usage of the delivery agent based on a single day

and a delivery zone (as now claimed; Page 10), and/or displaying a periodic calendar format the delivery agent statistics for a respective zone for each day (Page 12);

- the 35 USC 103(a) rejection of Claims 1-20 is not a proper rejection for the following reasons:

  - there is no motivation to combine the cited references of Borders et al., Murphy and O'Brien (Pages 10-11); and

  - hindsight was utilized to "piece together" the claimed invention (Page 11); and

- calculating/determining statistics in a goods delivery system was not admitted to by the applicant (Page 12);

- no documentary evidence was provided to support the official noticed fact that the ability to "drill down" in calendaring or other systems (Page 13).

6. In response to the Applicant's arguments that the 35 U.S.C. 101 rejection of Claims 1-9 is not proper examiner respectfully disagrees.

As an initial matter Claims 1-9 were rejected under 35 U.S.C. 101 as failing to be in the **technological arts** as required by 35 U.S.C. 101. Consequently, all of the Applicant's arguments stating that the claimed invention does product a useful, concrete, and tangible result are moot (Remarks: Pages 8-9).

Regarding the requirement under 35 U.S.C. ə 101 that a claimed invention be limited to the technological arts in order to be deemed statutory and in response to Applicant's arguments found on Pages 7-9 of the Applicant's Remarks of June 22, 2005, the Examiner submits that the phrase "technological arts" has been created and used by the courts to offer another view of the term "useful arts." See *In re Musgrave*, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of whether an invention is eligible for a patent is to determine if the invention is within the "technological arts."

Further, despite the express language of §101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by §101. These exceptions include "laws of nature," "natural phenomena," and "abstract ideas." See *Diamond v. Diehr*, 450, U.S. 175, 185, 209 USPQ (BNA) 1, 7 (1981). However, courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998). This addresses the second test under 35 U.S.C ə 101 of whether or not an invention is eligible for a patent. The Manual of Patent Examining Procedure reiterates this point. More specifically, MPEP ə 2106(II)(A) states, "The claimed invention as a whole must accomplish a practical application. That is, it must produce a 'useful, concrete and tangible result.' *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02." Furthermore,

"Only when the claim is devoid of any limitation to a practical application in the technological arts should it be rejected under 35 U.S.C. 101." (MPEP ∋ 2106(II)(A))

This "two prong" test was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson,* 409 U.S. 63, 175 USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the "technological arts." The court developed a "technological arts" analysis:

> The "technological" or "useful" arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., whether it "enhances" the operation of a machine. *In re Toma* at 857.

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.,* the court found that the "mathematical exception" using the Freeman-Walter-Abele test has little,

if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no "business method exception" since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that "[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112." See *State Street Bank & Trust Co.* at 1377. Both of these analyses go towards whether the claimed invention is non-statutory because of the presence of an abstract idea. *State Street* never addressed the first part of the analysis, i.e., the "technological arts" test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) ***was already determined to be within the technological arts*** under the *Toma* test. This dichotomy has been recently acknowledged by the Board of Patent Appeals and Interferences in affirming a §101 rejection finding the claimed invention to be non-statutory for failing the technological arts test. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BdPatApp&Int 2001).

It is important to note that in the *Bowman* decision the Board acknowledged the dichotomy of the analysis of the claims under 35 U.S.C. ∋ 101, thereby emphasizing the fact that not only must the claimed invention produce a "useful, concrete and tangible result," ***but that it must also be limited to the technological arts*** in order to be

deemed statutory under the guidelines of 35 U.S.C. ∋ 101. The Board very explicitly set forth this point:

> [1] We agree with the examiner. Appellant has carefully avoided tying the disclosed and claimed invention to any technological art or environment. As noted by the examiner, the disclosed and claimed invention is directed to nothing more than a human making mental computations and manually plotting the results on a paper chart [answer, Page 5]. The Examination GuideLines for Computer-Related Inventions are not dispositive of this case because there is absolutely no indication on this record that the invention is connected to a computer in any manner.
>
> Despite the express language of 35 U.S.C. ∋101, several judicially created exceptions have been excluded from subject matter covered by Section 101. These exceptions include laws of nature, natural phenomenon, and abstract ideas. *See Diamond v. Diehr*, 450 U.S. 175, 185, 209 USPQ 1, 7(1981). We interpret the examiner's rejection as finding that the claimed invention before us is nothing more than an abstract idea because it is not tied to any technological art or environment. Appellant's argument is that the physical (even manual) creation of a chart and the plotting of a point on this chart places the invention within the technological arts.
>
> The phrase "technological arts" has been created to offer another view of the term "useful arts." The Constitution of the United States authorizes and empowers the government to issue patents only for inventions which promote the progress [of science and] the useful arts. We find that the invention before us, as disclosed and claimed, does not promote the progress of science and the useful arts, and does not fall within the definition of technological arts. The abstract idea which forms the heart of the invention before us does not become a technological art merely by the recitation in the claim of "transforming physical media into a chart" [sic, drawing or creating a chart] and "physically plotting a point on said chart."
>
> In summary, we find that the invention before us is nothing more than an abstract idea which is not tied to any technological art, environment, or machine, and is not a useful art as contemplated by the Constitution of the United States. The physical aspects of claim 1, which are disclosed

> to be nothing more than a human manually drawing a chart and plotting points on this chart, do not automatically bring the claimed invention within the technological arts. For all these reasons just discussed, we sustain the examiner's rejection of the appealed claims under 35 U.S.C. ∋101. *See Ex parte Bowman*, 61 USPQ2d (BNA) 1669, 1671 (BdPatApp&Int 2001)

Similarly, in the present application, claims 1-9 are deemed to be non-statutory because they are not limited to the technological arts; a human could perform all recited steps manually. In conclusion, the Examiner submits that applicants claims do not meet the technological arts requirement under 35 U.S.C. ∋ 101, as articulated in *Musgrave* and *Toma*.

7. In response to the Applicant's arguments that the rejection of Claims 1-20 under U.S.C. 103(a) is improper Examiner respectfully disagrees.

As an initial matter Claims 1-20 were rejected under U.S.C. 103(a) as being unpatentable over the WebVan system and method, ***a single prior art reference***, and not the multiple references as argued. Each of the cited *supporting* references expressly teach one or more features/capabilities (characteristics) inherent in the WebVan system/method therefore each of the supporting references are clearly interrelated. Further the cited supporting references are proper and are cited to demonstrate one or more characteristics (feature, capabilities, etc.) **inherent** in the WebVan system/method over which the instant application has been rejected and therefore do not require a motivation to combine.

However, even if the cited references did not demonstrate one or more characteristics of the same WebVan system and method the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, each of the references in addition to demonstrating features inherent in the same WebVan system are each in an analogous are of goods delivery management.

8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

9. In response to applicant's arguments that calculating/determining statistics in a goods delivery system was not admitted to by the applicant examiner disagrees.

In citing Asthana et al., U.S. Patent No. 5,265,006, on the Information Disclosure Statement submitted by the applicant and received December 31, 2001, the applicant clearly admitted that Asthana et al. is prior art in that the applicant and/or one skilled in the art at the time of the invention would have had knowledge of teachings of Asthana et al.

In an effort to advance prosecution the examiner has clarified Asthana et al. as admitted prior art utilized in the USC 103(a) rejection of claims 1-20.

10. In response to applicant's that no evidence was provided to support officially noticed (old and well known) facts examiner respectfully disagrees.

Detjen et al., U.S. Patent No. 5,974,466, as cited in the first office action, teach a calendaring/service scheduling system and method wherein users have the ability to "drill-down" (link, view further details) into the service schedule/calendar thereby enabling users to efficiently view (navigate) their schedule by month, year, week and/or day (Column 5, Lines 8-68; Column 6, Lines 1-29; Figures 2-5, Elements 30-35, 42).

Additionally the following newly cited references teach systems wherein users have the ability to drill-down via periodic calendar format:

- ABFS.com – eCenter Web Pages (2001) teaches a commercially available goods delivery system and method wherein users access the system via the Internet and can view/track and order delivery capacity utilizing a plurality of modules (subsystems) including but not limited to "Shipment Planner". More specifically the ABFS.com web pages teach that the shipment planner provides a "simple calendar interface" wherein users can view and drill-down into additional details by month, week, and/or day (Pages 2, 4-5 and 9-11).

- Rasansky et al., WO 99/38079, teach an online calendaring and scheduling system wherein users are provided personal and secure calendars via the Internet. Rasansky et al. further teach that the calendars provide drill-down capabilities enabling users to view month, week, year or event/appointment level details (Figures 16A-21C).

11. It is noted that the applicant did not challenge the officially noticed facts cited in the First Office Action therefore those statements as presented are herein after prior art. Specifically it has been established that it was old and well known in the art at the time of the invention:

- to calculate the utilization of a delivery agent as a percentage over a specified period of time (FAOM: Page 15, Last Paragraph).

Claim Rejections - 35 USC § 101

12. Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

(1) whether the invention is within the technological arts; and

(2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result.

Regarding Claims 1-9, Claims 1-9 only recite an abstract idea. The recited method for displaying the capacity utilization of a goods delivery system does not apply, involve, use or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. The claimed invention, as a whole, is not within the technological art as explained above claims 1-9 are deemed to be directed to non-statutory subject matter.

Examiner suggests that the applicant incorporate into Claims 1-9 language that the proposed method is implemented by a computer (e.g. computer-implemented method) and/or embodied in a computer system and that at least one of the proposed method steps is performance by the computer system to overcome this rejection.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webvan (1999) aspects of which are discussed in the following references:

I. Borders et al., U.S. Patent Publication No. 2001/0047285, hereinafter referred to as reference A;

II. Murphy, Jean, Webvan: Rewriting The Rules On 'Last Mile' Delivery (2000) herein after referred to as reference B; and

III. O'Briant, Erin, Webvan Revs Up (2000) herein after referred to as reference C.

in view of Asthana et al., U.S. Patent No. 5,265,006.

Regarding Claims 1, 10 and 19 Webvan teaches a method and system for scheduling the delivery of goods via the Internet (order fulfillment; see reference A:

Abstract), the goods delivery system further comprising a plurality of subsystems (modules, components) including but not limited to: delivery route planning, capacity allocation/planning, billing, web store, transaction, transportation resource management, customer service management, warehouse management, order management, availability-to-promise and field service (reference A: Paragraphs 0034-0036, 0043, 0045-0048, 0060, 0076, 0084 0088- 0096, 0109, 0116, 0120, 0125, Figure 1, Element 118, 128 as shown below). Webvan further teaches that the goods delivery system utilized a plurality of commercially available systems including but not limited to systems provided by SAP, Desacrates and Optum (see reference A: Paragraphs 0050 and 0057;see reference B, Pages 3 and 5).

More specifically Webvan teaches that the goods delivery system enables users to self-schedule good delivery appointments wherein users identify the delivery time window that best fits their schedule, the identification process is facilitated by a display of the capacity (availability, utilization) of the goods delivery system (vans, trucks, agents, etc.) in a periodic calendar format. Webvan further teaches a goods delivery system having at least one delivery agent location, address and delivery zone (available delivery times, delivery windows, time windows, calendar, delivery window grid, appointments; reference A: Paragraphs 0007, 0045, 0077-0079, Figures 1-13; see reference B: Page 4, Paragraphs 2-5; Page 5, Paragraphs 5-7; Page 6, Paragraphs 5-9).

Webvan teaches that the goods delivery system further comprises:

- getting (receiving, inputting) delivery agent information (mobile field device; see reference A: Figure 1, Elements 106, 108, 112, 118 as shown below; see reference C: Page 28 and 32);

- calculating the delivery capacity for the delivery agent (capacity allocation, capacity planning, number of totes per order, number of totes per van, shoehorning, etc.; see reference A: Paragraphs 0060, 0076, 0084, 0088-0096, 0109, 0116, 0120, 0125; Figures 6-8; see reference C: Pages 29-31 – Delivering on time);

- calculating the delivery capacity used for the delivery agent (actual order size (number of totes), estimated number of totes; see reference A: Paragraphs 0056-00656);

- calculating the usage information for the delivery agent based on a single day and a delivery zone/route (see reference A: Paragraphs 0060, 0076, 0084 0088- 0096, 0109, 0116, 0120, 0125; Figures 6-8; see reference C: Pages 29-31 – Delivering on time);

- displaying in a calendar format (periodic, time-based) the delivery agent information (schedule, capacity, available delivery times, delivery windows, time windows, calendar, delivery window grid, appointments; reference A: Paragraphs 0007, 0045, 0077-0079, Figures 5, 9 and 13); and

- determining a plurality of statistics (metrics, values, parameters, etc.; see reference B: Page 4, Paragraphs 2-5 – "mind boggling number of calculations are required to optimize each order for workflow efficiency and maximum tote capacity..").

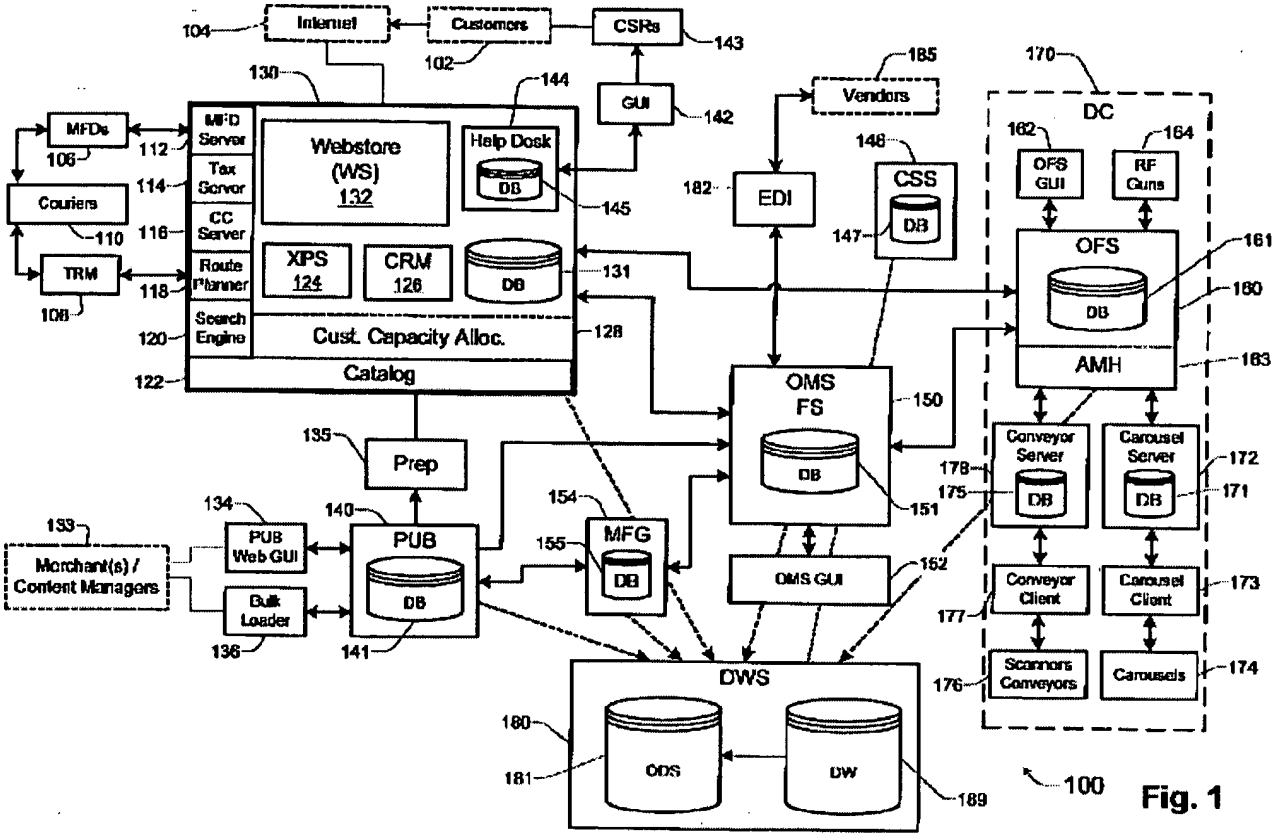


Fig. 1

Figure 1: Reference A, Figure 1

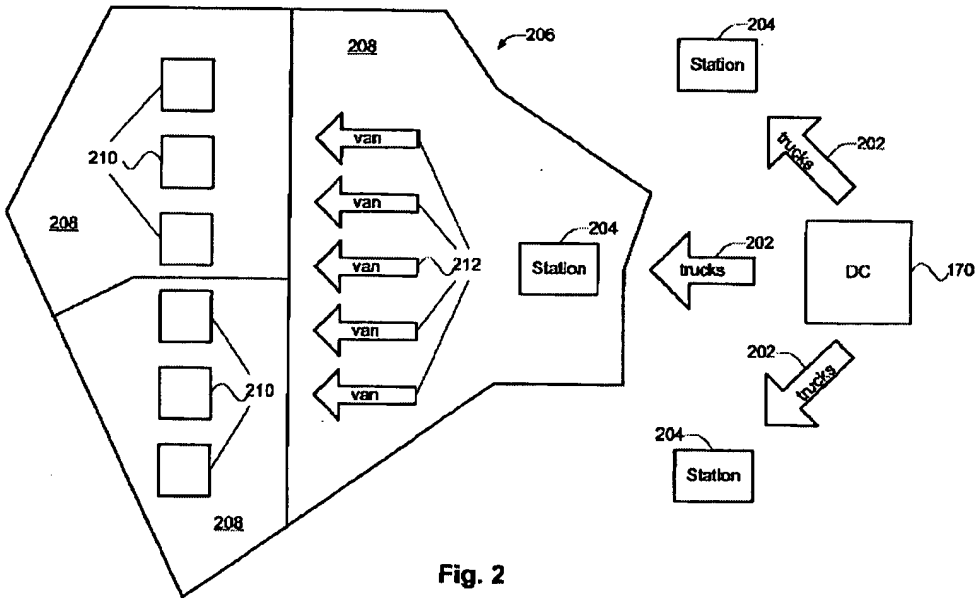
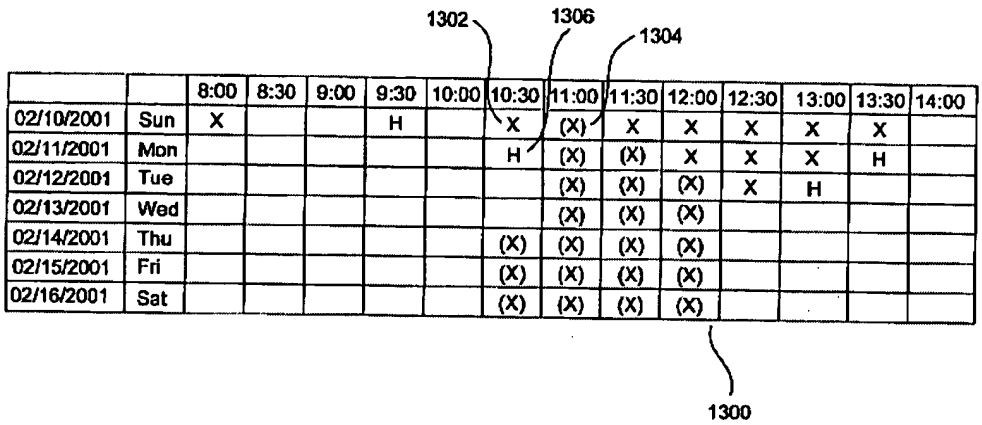


Fig. 2

Figure 2: Reference A, Figure 2



		8:00	8:30	9:00	9:30	10:00	10:30	11:00	11:30	12:00	12:30	13:00	13:30	14:00
02/10/2001	Sun	X			H		X	(X)	X	X	X	X	X	
02/11/2001	Mon						H	(X)	(X)	X	X	X	H	
02/12/2001	Tue							(X)	(X)	(X)	X	H		
02/13/2001	Wed							(X)	(X)	(X)				
02/14/2001	Thu						(X)	(X)	(X)	(X)				
02/15/2001	Fri						(X)	(X)	(X)	(X)				
02/16/2001	Sat						(X)	(X)	(X)	(X)				

FIG. 13

Figure 3: Reference A, Figure 13

Fig. 4

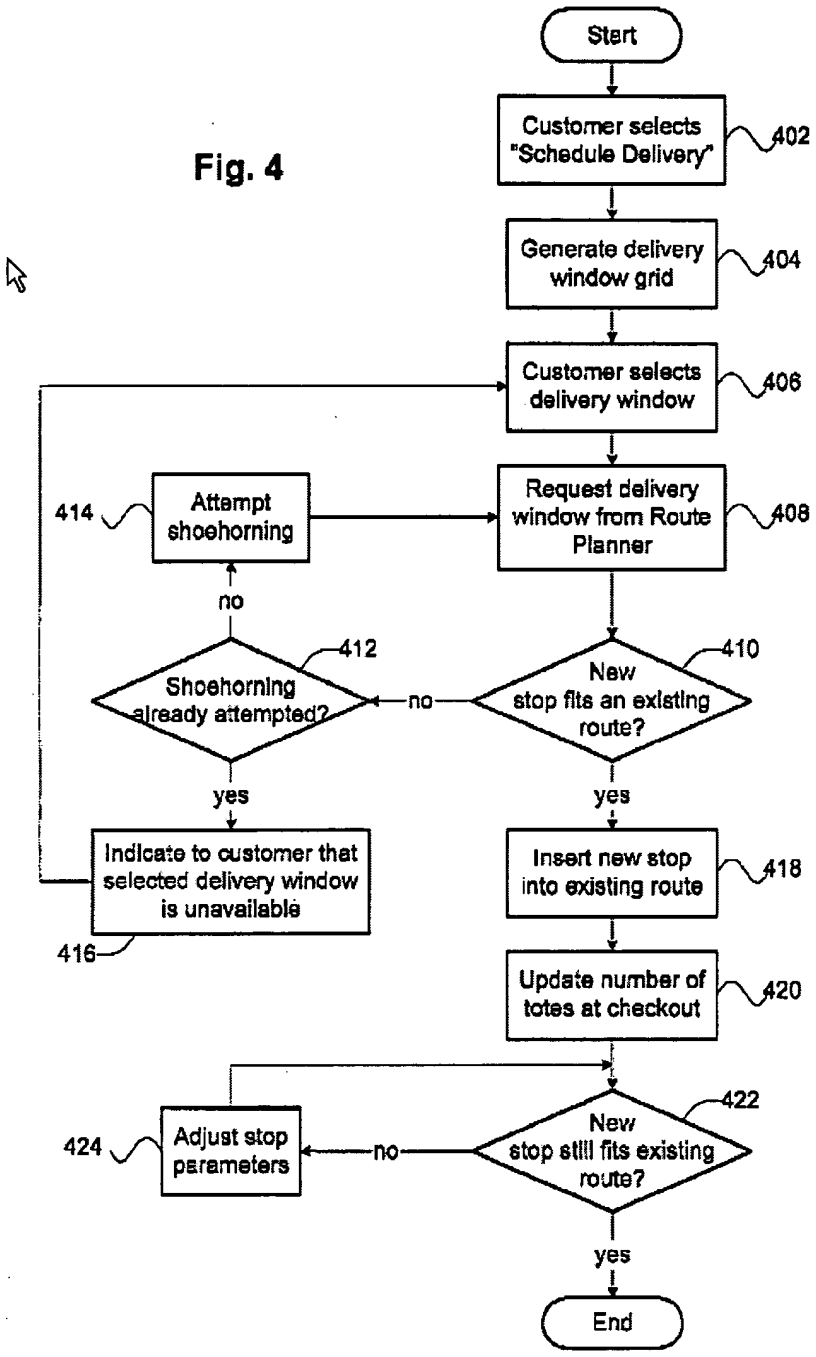


Figure 4: Reference A, Figure 4

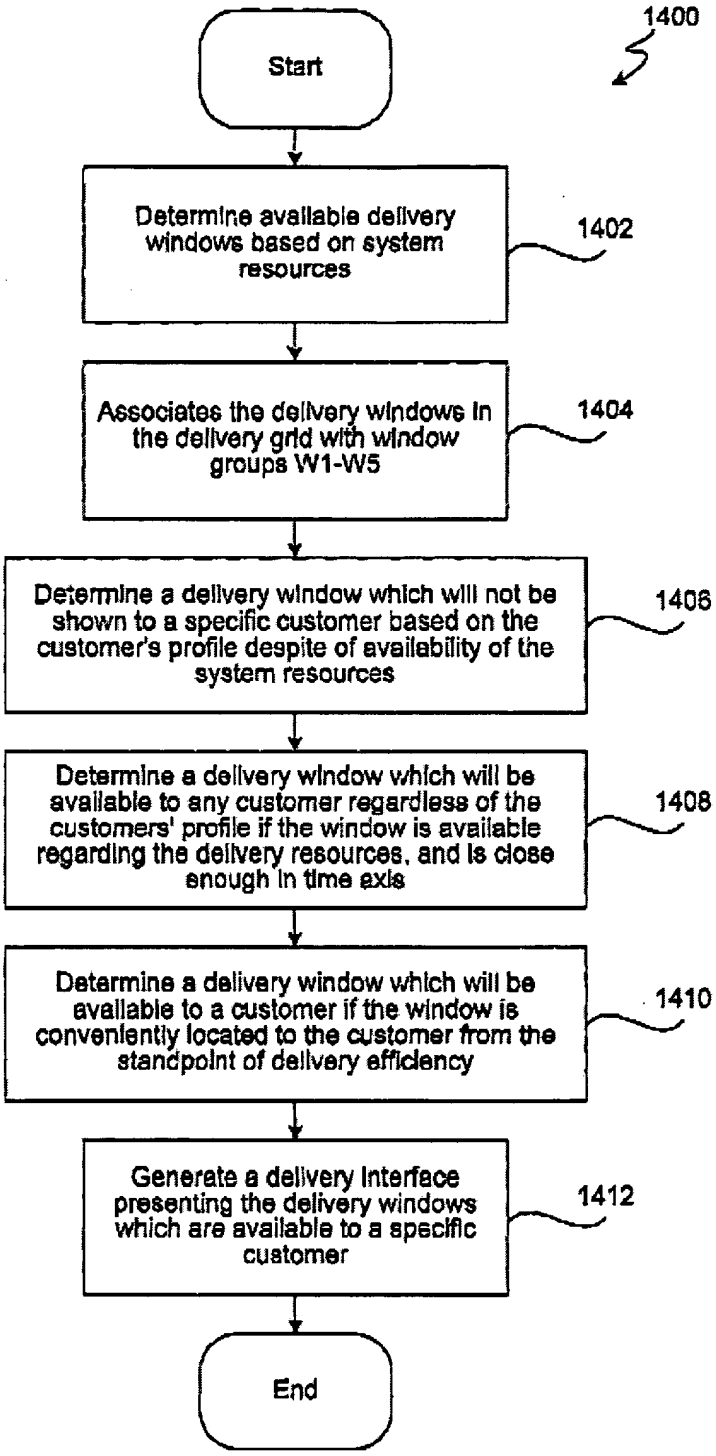

1400
Start
Determine available delivery windows based on system resources
1402
Associates the delivery windows in the delivery grid with window groups W1-W5
1404
Determine a delivery window which will not be shown to a specific customer based on the customer's profile despite of availability of the system resources
1406
Determine a delivery window which will be available to any customer regardless of the customers' profile if the window is available regarding the delivery resources, and is close enough in time axis
1408
Determine a delivery window which will be available to a customer if the window is conveniently located to the customer from the standpoint of delivery efficiency
1410
Generate a delivery interface presenting the delivery windows which are available to a specific customer
1412
End

FIG. 14

Figure 5: Reference A, Figure 14

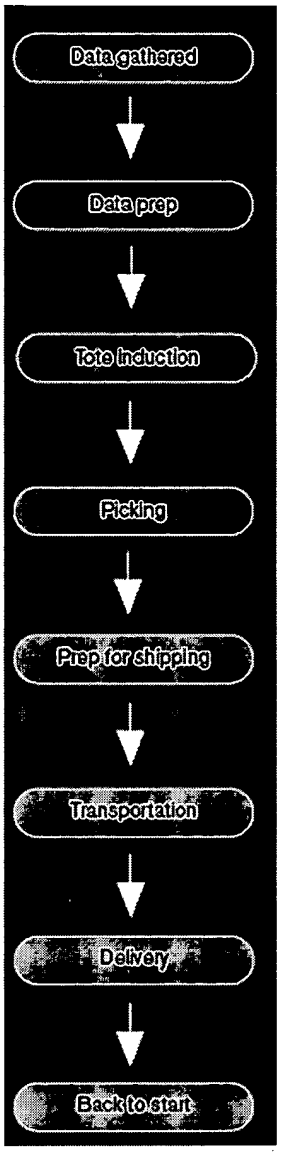


Figure 6: Reference C, Page 32

While Webvan teaches displaying delivery agent availability (available delivery windows) Webvan does not expressly teach the display of the delivery agent statistics or that the display enables the user to "drill-down" (link) to daily details.

Asthana et al. teaches the determination (calculation, utilization, etc.) of statistics in a goods delivery system (Column 5, Lines 1-6; Column 9, Lines 65-68; Column 10, Lines 1-10; Column 13, Lines 12-20; Column 14, Lines 4-11; Figures 1, 2, 2A, 4 and 8), in an analogous art of delivery management/transportation for the purposes of planning and optimizing the utilization (e.g. capacity) of a transportation system/network.

Asthana et al. further teach that the goods delivery system comprises (Column 9, Lines 35-68; Column 13, Lines 1-68; Figures 1, 2, 2A, 4 and 8):

- the collection, calculation and utilization of a plurality of statistics (van statistics, area statistics, global statistics; Column 5, Lines 4-7; Column 9, Lines 67-68; Column 10, Lines 1-5; Column 13, Lines 12-45; Column 32, Lines 20-28; Figure 1, Element 8; Figure 8, Element 36; Figure 2, Element 20);

- providing capacity planning and management (load planning, van utilization, etc.; Column 23, Lines 60-68; Column 24, Lines 15-60; Column 25, Lines 10-60);

- enabling route planning and scheduling for a plurality of zones (tubes, lanes, rows, etc.) during a specified time period (Column 2, Lines 35-57; Figures 2A and 4-5);

- utilizing a seven day planning horizon (Column 11, Lines 34-41); and

- enabling users to schedule overrides (Column 29, Lines 50-60).

It would have been obvious to one skilled in the art at the time of the invention that the goods delivery system as taught by Webvan, with its implicit collection and utilization of a plurality of information (data, metrics, statistics) as part of its route planning, route optimization capacity planning and warehouse management

subsystems, would have benefited from displaying a plurality of statistics (metrics) regarding the goods delivery system including but not limited to delivery agent statistics in view of the teachings of Asthana et al.; the resultant system providing additional information to assist in Webvan's ongoing focus on efficiency and automation (see reference C: Page 29, Delivering on time, Pages 30-31 and 32).

Official notice is taken that the ability to "drill-down" (link, view further details) in calendaring or other systems is conventional and well established as a means for enabling users to efficiently view and/or navigate information in a plurality of formats or levels (e.g. month, year, day, week), as evidenced by at least ABFS.com, Rasansky et al. and Detjen et al., as discussed above.

It would have been obvious to one skilled in the art at the time of the invention that the Internet-based goods delivery system and method as taught by the combination of Webvan and Asthana et al., with its capability of displaying delivery capacity/availability in a periodic calendar format (week), would have benefited from enabling users to view (display) the available delivery times (capacity of the system) in a plurality of periodic calendar formats such as month, week or day thereby making it easier for users to quickly identify that delivery window that best fits their schedule.

Regarding Claims 2, 11 and 20 Webvan teaches a goods delivery system wherein a plurality of metrics (statistics) are utilized as discussed above. Webvan

further teaches that the goods delivery system includes at least one of the following (selected from the group consisting of) statistics delivery capacity, reserved capacity and deliveries (schedule, number of totes per order, number of totes per van, route optimization, reserve capacity, override groups; see reference A: Paragraphs 0078-0080, 0084, 0088, 0091; see reference B: Paragraphs 2-5, Page 4; see reference C: Delivering on time, Pages 30-31 and Page 32).

Regarding Claims 3 and 12 Webvan teaches a goods delivery system wherein a plurality of information (statistics, metrics and parameters) is calculated including the calculation of usage information comprising delivery schedules for delivery agents (route planning, delivery route, delivery schedule; see reference A: Paragraphs 0028, 0034, 0045-0048, 0060; Figures 1, 3, 4-5, see reference C: Pages 30-32).

Regarding Claims 4 and 13 Webvan teaches a goods delivery system wherein a plurality of information (statistics, metrics and parameters) is calculated as discussed above.

While Webvan teaches delivery agent utilization (e.g. determining such things as the delivery agents ability to accommodate new orders, shoehorning; see reference A: 0057-0058), Webvan does not expressly teach calculation the **percent** capacity utilization per day per delivery agent.

Official notice is taken that the calculation of the utilization (capacity, workload, availability) of a delivery agent (technician, service provider) as a **percentage** over a specified period of time (day, month, week, etc.) is old and very well known in the art as a means for determining such things as the availability of that delivery agent to make more deliveries during that time period.

It would have been obvious to one skilled in the art at the time of the invention that the goods delivery system as taught by Webvan, with its implicit collection, determination and utilization of a plurality of information (data, metrics, statistics) as part of its route planning, route optimization capacity planning and warehouse management subsystems, would have benefited from calculating a plurality of percentages including but not limited to the percent capacity utilization per day for delivery agents; the resultant system thereby providing information regarding the overall workload of a particular agent over a specified period of time thereby enabling the system or user to determine if new orders can be added to the delivery agents schedule (shoehorning, overriding, etc.).

Regarding Claims 5 and 14 Webvan teaches a goods delivery system wherein a plurality of metrics (statistics) are utilized as discussed above. Webvan further teaches that a plurality of constraints (conditions, information, parameters) are collected, determined and utilized as part of the goods delivery systems overall optimization

efforts (reference A: Paragraphs 0034-0036, 0043, 0045-0048, 0060, 0076, 0084 0088-0096, 0109, 0116, 0120, 0125, Figures 1-12).

Regarding Claims 6 and 15 Webvan teaches a goods delivery system wherein a plurality of metrics (statistics) are utilized as discussed above. More specifically Webvan teaches a goods delivery system wherein a plurality of delivery agent information is utilized and that the information includes at least one of the following: location, name, code, schedule name or group/zone name (reference A: Paragraphs 0034-0036, 0043, 0045-0048, 0050, 0056-0065).

Regarding Claims 7-8 and 16-17 Webvan teaches a goods delivery system wherein delivery agent availability (capacity, time windows, appointments, etc) is displayed in a periodic time format as discussed above.

Webvan does not expressly teach displaying the calendar format (time period) further comprises displaying the delivery agent statistics.

Asthana et al. teaches the determination (calculation, utilization, etc.) of statistics in a goods delivery system (Column 5, Lines 1-6; Column 9, Lines 65-68; Column 10, Lines 1-10; Column 13, Lines 12-20; Column 14, Lines 4-11; Figures 1, 2, 2A, 4 and 8), in an analogous art of delivery management for the purposes of planning and optimizing

a good delivery/transportation system/network (e.g. balancing capacity imbalances between/amongst zones and vans in order to reduce costs; Column 13, Lines 12-45).

It would have been obvious to one skilled in the art at the time of the invention that the goods delivery system as taught by Webvan, with its implicit collection and utilization of a plurality of information (data, metrics, statistics) as part of its route planning, route optimization capacity planning and warehouse management subsystems, would have benefited from displaying a plurality of statistics (metrics) regarding the goods delivery system including but not limited to delivery agent statistics, as part of Webvan's ongoing focus on efficiency and automation (see reference C: Page 29, Delivering on time, Pages 30-31 and 32) in view of the teachings of Asthana et al.; the resultant system further assisting in the planning and optimizing a good delivery/transportation system/network (e.g. balancing capacity imbalances between/amongst zones and vans in order to reduce costs; Asthana et al.: Column 13, Lines 12-45).

Official notice is taken that the ability to "drill-down" (link, view further details) in calendaring or other systems is conventional and well established as a means for enabling users to efficiently view (navigate) their schedule or other information in a plurality of formats or levels (e.g. month, year, day, week), as evidenced by at least ABFS.com, Rasansky et al. and Detjen et al., as discussed above.

It would have been obvious to one skilled in the art at the time of the invention that the Internet-based goods delivery system and method as taught by the combination of Webvan and Asthana et al., with its capability of displaying delivery capacity/availability in a periodic calendar format (week), would have benefited from enabling users to view (display) the available delivery times (capacity of the system) in a plurality of periodic calendar formats such as month, week or day thereby making it easier for users to quickly identify that delivery window that best fits their schedule.

Regarding Claims 9 and 18 Webvan teaches a goods delivery system wherein the delivery agent statistics includes at least one of the following: default capacity, override capacity, capacity usage or percent capacity usage (average/standard order size, standard order delivery time, override, etc.; see reference A: Paragraphs 0056-0065, 0076 0084, 0086; Figure 9; see reference C: Pages 30-32).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- O'Neil et al., U.S. Patent No. 6,219,653, teach a goods transportation exchange method and system wherein users create/place market orders for goods, the market orders including, but is not limited to receiving delivery agent information (carrier, shipper; e.g. availability, price, etc.) as well as calculating and graphically displaying delivery agent capacity (used, available; e.g. load balance).

- Ng, Frank, U.S. Patent No. 6,801,901, teaches a system and method for determining and displaying the capacity of a goods delivery system (i.e. building and optimizing load configurations).

- Short et al., U.S. Patent Publication No. 2002/0188702, teach a system and method for managing the delivery of goods (fleet management) wherein the system tracks the plurality of products/goods, vehicles and personnel for a plurality of management purposes including but not limited to driver productivity reports. Short et al. further teach that the system utilizes a plurality of commercially available sensors to track such things as the number of available trucks/trailers, their size, storage capacity and the like as well as utilizes the sensors to determine current capacity (load, utilization) of the transportation network/system (trucks/trailers).

- Clarke et al., U.S. Patent Publication No. 2003/0014288, teach a system and method for managing the demand and capacity of a goods delivery system. More specifically Clarke et al. teach that the system determines/calculates the profitability of each load in the system wherein profitability takes into account system capacity (committed/reserved, available/unused, etc.). Clarke et al. further teach that the system selects particular delivery agents (drivers) and a unit capacity for each load.

- Bort, Julie, A single route to e-comm (2001), teach a system and method for displaying the capacity utilization of a goods delivery system having at least one delivery agent location, address and delivery zone. More specifically Bort teaches the commercial availability and success of ABF Freight Systems eCommerce systems (eCenter) wherein the system includes a Shipment Planner that displays shipments (i.e. system utilization) in a calendar format over the web.

- ABF Name in 50 Best Web Sites (2000) teaches the commercial availability and success of ABF Freight Systems eCenter system wherein eCenter comprises a

plurality of modules/subsystems including but not limited to the *patent-pending* "Shipment Planner" module that enables customers to view and drill-down on delivery information (i.e. system utilization) via a calendar interface.

- Brown, Stuart, How e-tailers deliver within hours (2000), teaches the well known application of delivery management systems wherein users can view and order/select from available delivery capacity via periodic calendar format. Brown further teaches that the well known delivery management systems determine which products to put of which trucks and in what order and further that during the capacity planning process a plurality of factors are taken into account including size and weight capabilities of different trucks (capacity) and even driver overtime (i.e. extent to which the driver exceeds his/her 40 hour capacity).

- ABFS.com – eCenter Web Pages (2001) teaches a commercially available goods delivery system and method wherein users access the system via the Internet to view/track and order delivery capacity utilizing a plurality of modules/subsystems including but not limited to the "Shipment Planner". More specifically the ABFS.com teaches that the shipment planner subsystem provides a "simple calendar interface" wherein users can view and drill-down into additional details by month, week, and/or day.

- Rasansky et al., WO 99/38079, teach an online calendaring and scheduling system wherein users are provided personal and secure calendars via the Internet. Rasansky et al. further teach that the calendars provide drill-down capabilities enabling users to view month, week, year or event/appointment level details.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott L. Jarrett whose telephone number is (571) 272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hafiz Tariq can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SJ
8/31/2005

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